

## **NOTICE OF PROPOSED RULEMAKING**

### **TITLE 2. ADMINISTRATION DIVISION 7. SECRETARY OF STATE CHAPTER 9. BUSINESS PROGRAMS**

#### **PROPOSED AMENDMENTS TO SECTIONS 21903 - SPECIAL HANDLING FEES, AND 21905 EXPEDITED FILING OF DOCUMENTS**

#### **PROPOSED ADOPTION OF SECTION 21905.5 - REQUEST FOR SPECIFIC FILE DATE**

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

### **PROPOSED REGULATORY ACTION**

The Secretary of State proposes the following regulatory action: Amend provisions of 2 California Code of Regulations (“CCR”) sections 21903 and 21905 to further implement, interpret or make specific provisions of Government Code section 12182; add 2 California Code of Regulations section 21905.5 to further implement, interpret or make specific provisions of Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062.

Specifically,

- 1) Section 21903 will be amended to change the special handling service from a while-you-wait service to a drop-off service with priority over documents the Secretary of State receives by mail. The changes to Section 21903 will also (1) replace the provisions relating to fees charged for self-service copy machines, self-service printers and envelopes at an anticipated Customer Service Center, which never came to fruition, with a provision that will clarify the fees charged by the Secretary of State for copying records, (2) remove a special handling charge for documents received by the Secretary of State Uniform Commercial Code Section and (3) make other non-substantive technical corrections or clarifications.
- 2) Section 21905 will be amended to add a new optional class of service, available to anyone requesting it, providing a same-day response for documents upon the payment of an additional \$850 fee. If the document and additional fee are submitted to the Secretary of State in person at the Sacramento public counter by 9:30 a.m., the customer will receive a filing response by 4:00 p.m. that same day.
- 3) Section 21905.5 will provide written guidelines to provide a business entity document the original file date (the original date of receipt) as long as the file date was specifically

requested at the time it was originally submitted and the document is resubmitted to the Secretary of State within three business days from the date it was returned and it then conforms to law.

## **AUTHORITY AND REFERENCE**

### **Sections 21903 and 21905**

Authority cited: Government Code section 12182.

Reference cited: Government Code section 12182.

### **Section 21905.5**

Authority cited: Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062.

Reference cited: Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062.

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

The Secretary of State proposes to amend sections 21903 and 21905 in Title 2 of the California Code of Regulations, which would implement, interpret or make specific section 12182 of the Government Code. The Secretary of State also proposes to add 2 California Code of Regulations section 21905.5 to further implement, interpret or make specific provisions of Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062.

### **Sections 21903 and 21905**

Section 21903 permits Secretary of State customers to submit business entity documents for filing to the Secretary of State at the Sacramento public counter, and upon the payment of an additional \$15 special handling fee to have the document processed and returned to the customer while they wait (the "wait-for" service). There is no guaranteed turnaround time for this service, but the document is generally processed and returned to the customer on the same day.

Section 21905 permits Secretary of State customers to submit business entity documents for filing to the Secretary of State at the Sacramento public counter, and upon the payment of an additional \$350 expedite fee to have the document processed and returned to the customer within 24 hours, excluding weekends and holidays (the "24-hour expedite" service).

The proposed amendments are intended to replace the optional wait-for service that is currently offered only to individual customers with an optional same-day expedited turnaround service ("same-day expedited" service) that will be available to all Secretary of State customers at the Sacramento public counter. The Secretary of State will continue the very low cost \$15 special handling fee for documents dropped-off at its Sacramento public counter ("drop-off" service). These documents are generally processed in 3-7 business days and are given priority over documents the Secretary of State receives by mail.

## **Section 21905.5**

Corporations Code sections 110(a), 5008(a), 12214(a), 15628, 15902.06 and 17062 specify that upon receipt by the Secretary of State, if a business entity document conforms to law, the Secretary of State shall file it. Those sections also provide that, unless a future file date is requested, the file date shall be the date the document is received by the Secretary of State. When a business entity document is returned by the Secretary of State for failing to conform to law, in an effort to provide better customer service and meet the needs of its business customers, the Secretary of State generally honors the original file date (the original date of receipt) as long as the file date was specifically requested at the time it was originally submitted and the document is resubmitted to the Secretary of State within three business days from the date it was returned and it then conforms to law. This section will provide written guidelines for the public to utilize this process.

## **PUBLIC HEARING**

The Secretary of State has not scheduled a public hearing on this proposed rulemaking. However, the Secretary of State's Office will hold a hearing if it receives a written request for a public hearing from any interested person, or his authorized representative, no later than 15 days before the close of the written comment period. Any request for a public hearing should be sent within the time specified to the contact person indicated below.

## **WRITTEN COMMENT PERIOD**

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on May 12, 2008. The Secretary of State will consider only comments received at the Secretary of State office by that time. Submit comments to:

Todd Vlaanderen, Senior Staff Counsel - Supervisor  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Secretary of State has made the following initial determinations:

1. **Mandate on local agencies and school districts:** None.
2. **Cost or savings to any state agency:** None beyond that budgeted or expected to be budgeted for the Secretary of State's Office.
3. **Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.
4. **Other nondiscretionary cost or savings imposed on local agencies:** None.

5. **Cost or savings in federal funding to the state:** None.
6. **Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None.
7. **Cost impacts on a representative private person or businesses:** The Secretary of State anticipates negligible overall cost increases to private persons and businesses. These regulations will not impact the cost to private persons or businesses submitting business entity documents by mail. These regulations will not impact the cost to private persons or businesses submitting business entity documents through a Service Company except to the extent they choose to take advantage of the optional new same-day expedited service. Those customers submitting business entity documents at the Sacramento public counter without the assistance of a Service Company, which account for approximately 9.3% of the business entity filings in the Sacramento office, no longer will have a very low cost (\$15) wait-for service option. Customers still will be able to use the drop-off service with the \$15 fee and receive their filed documents in 3-7 business days, on average, or use one of the expedited services. Since the additional cost for the new same-day expedited service is optional, it is impossible to determine exactly how much it may increase costs for private persons and businesses, but it's anticipated to be negligible.
8. **Adoption of these amendments will not:**
  - (A) create or eliminate jobs within California;
  - (B) create new businesses or eliminate existing businesses within California; or
  - (C) affect the expansion of businesses currently doing business within California.
9. **Significant effect on housing costs:** None.
10. **Effect on small business:** Those small businesses submitting business entity documents at the Sacramento public counter without the assistance of a Service Company no longer will have a very low cost (\$15) wait-for service option. Small businesses still will be able to use the drop-off service with the \$15 fee and receive their filed documents in 3-7 business days, on average, or use one of the expedited services. Since the additional cost for the new same-day expedited service is optional, it is impossible to determine exactly how much it may increase small business costs, but it's anticipated to be negligible.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Secretary of State's Office must determine that no reasonable alternative has been identified that would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Todd Vlaanderen, Senior Staff Counsel - Supervisor  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

The backup contact person for these inquiries is:

Edward S. Maxwell, Senior Staff Counsel  
Secretary of State  
1500 11th Street, Third Floor  
Sacramento, CA 95814  
Telephone: 916-653-6244

All inquiries regarding this proposed rulemaking, including requests for obtaining the Final Statement of Reasons, should be directed to Todd Vlaanderen at the address listed above.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OR PROPOSED REGULATIONS**

The Secretary of State's Office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the regulations as proposed, and the initial statement of reasons. The initial statement of reasons includes the express terms of the proposed action and the information upon which the proposed action is based. Copies are posted on the Secretary of State's web site at <http://www.ss.ca.gov/business> and may also be obtained from the contact indicated below.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Secretary of State's Office may adopt the proposed regulations substantially as described in this notice. If the Secretary of State's Office makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Secretary of State's Office adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the Contact indicated above. The Secretary of State's Office will accept written comments on the modified regulations for 15 days after the date on which they are made available generally.

## **AVAILABILITY OF THE FINAL STATE OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Todd Vlaanderen at the address listed above.

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Secretary of State's web site at <http://www.ss.ca.gov/business>. A copy of the Final Statement of Reasons will be posted on the web site once the statement has been prepared.